

Leto, Sam [LEGIS]

From: Janet Keefer [janet.keefer@DRAKE.EDU]
Sent: Tuesday, February 06, 2007 9:54 AM
To: Leto, Sam [LEGIS]
Subject: More on Mediacom/Sinclair

Hi, Sam,

I appreciated and enjoyed my opportunity to speak to the Legislative Oversight committee last month, and, as you might expect, I am following developments in the case closely. I am pasting below an article from Broadcasting & Cable Magazine's web letter, which indicates that the dispute is ratcheting up a notch. I attempted to send it directly from the magazine's website, but the mail system there told me you email was "not a valid email address." Go figure. Please share it with members of the oversight committee who might be interested. Here is the article:

Breaking News

Exclusive: ACA To Take Aim at FCC After Sinclair/Mediacom Retrans Deal By John Eggerton -- Broadcasting & Cable, 2/5/2007 4:24:00 PM Digg This | add to Del.icio.us

Look for the American Cable Association to take aim at the FCC and broadcasters in the wake of Friday's retransmission consent deal between Sinclair and cable operator Mediacom. Matthew Polka, President of ACA, which represents smaller and mid-sized cable operators, told B&C the group was preparing to issue a statement expressing its displeasure with the FCC and calling for Congressional action on retransmission consent.

"FCC has completely abdicated its public authority to regulate retransmission consent for the benefit of consumers," Polka said, arguing that the deal was a case not of the marketplace working, but of Sinclair leveraging "every benefit of federal rules to the detriment of consumers."

The FCC concluded that Sinclair had not bargained in bad faith and that it did not have the power to force the broadcaster to restore stations it had pulled from Mediacom Jan. 6. FCC Chairman Kevin Martin encouraged arbitration, but backed up the Media Bureau's decision that it could not intervene, even though a couple of powerful Congressmen suggested it could.

He said that the retransmission consent process unfairly disadvantages his member companies, but more importantly the subscribers to those companies, because they wind up paying more than the subs of big cable companies like Time Warner, with which Sinclair struck a deal just before Mediacom, but without pulling any stations from its systems to get the deal done.

Polka suggested that there appeared to be "no amount of behavior on broadcasters part that amounts to bad faith," adding, "That process is not usable."

Saying the Sinclair/Mediacom deal solved nothing, Polka added that there are "millions of other consumers who stand to be harmed," citing the hundreds of millions CBS's Les Moonves says he expects to get for his stations in the next round of retransmission consent negotiations over the next couple of years.

The National Association of Broadcasters declined comment and Sinclair had not returned a call at press time.

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Probe tactics of Sinclair in feud with Mediacom

By JANET HILL KEEFER
IOWA VIEW

Sinclair Broadcasting reportedly is about to apply its Mediacom strategy to Comcast cable systems by pulling the plug on 30 stations in 23 Comcast cable markets as of Feb. 5. If it does, then the 250,000 Iowa viewers affected by the Sinclair-Mediacom feud represent a minor practice skirmish. The Sinclair-Comcast feud could affect an estimated 3 million.

As it did in Iowa, Sinclair is demanding that Comcast pay cash for its programs. Having pulled the plug in Iowa, swaggering Sinclair can show that it means business.

If this were a TV Western, either a U.S. marshal or a good-guy gunslinger would ride into town about now and impose steely-eyed justice. But the vexing thing about Sinclair's Iowa holdup is that there is no regulatory gunman to help us out.

The FCC is powerless to intervene, even though Sinclair Broadcasting is hardly operating in the "public interest, convenience and necessity," as the law requires. The only venue in which a broadcaster can be held accountable is at license-renewal time, and then only if somebody who is capable of using the license challenges Sinclair's performance record. Even if all 250,000 of Iowa's disgruntled cable viewers contributed \$10 to a big kitty somewhere, that would generate only \$2.5 million, which wouldn't be enough to buy the assets of Sinclair's stations in Iowa. (For a rough comparison, WHO-TV, admittedly a more valuable property, just sold for \$575 million.)

The city government has no enforcement power in this dispute, either. All Des Moines can do is to negotiate franchise terms and try to encourage cable companies to apply to serve the Des Moines market.

So how did we end up in this sorry state? In 2004, Congress effectively removed the ceiling on how many TV stations one owner could acquire nationally. From 1934 to 2004, that ceiling was seven. Now the only limit is that no group of stations is allowed to reach more than 39 percent of the national TV audience. Sinclair now owns 58 TV stations that reach, the company claims, 22 percent of the U.S. population. Revenue from 58 stations allows Sinclair to go dark on cable systems here and there for the short term while arranging for big payoffs in the long term.

The FCC recognized long ago that local stations belong on local cable systems and developed "must-carry" rules requiring cable systems to offer at least one-third of their basic-tier channel capacity to carry local stations. When a station invokes its "must-carry" rights, it cannot ask for compensation from the cable system. But in the early 1990s, the FCC of added a "retransmission consent" option, which can involve compensation from the cable system to the station.

"Retransmission consent" is what Sinclair is not giving to Mediacom, and apparently not to Comcast. The FCC devised the retransmission-consent option because, as it explains on its Web site, "the absence of this requirement was distorting the video marketplace and threatening the future of over-the-air television broadcasting." (Go figure.)

What happens when the two sides can't agree, as they have been spectacularly unable to do here? Here's the FCC's advice in its own words:

Generally, the FCC is not authorized to participate in discussions between television stations and cable systems regarding retransmission consent agreements. Furthermore, the FCC cannot tell a cable operator which stations or program services to delete in order to comply with the must-carry requirement.

What Congress gives it can also take away. We should insist that the new Congress review Sinclair's extortionate behavior in Des Moines and other similar attempts by broadcasters to "double dip" in local TV markets. The change Congress made in ownership rules allowed big station groups with distant management to insulate themselves almost completely from any kind of accountability to viewers and the communities in which they live.

It's time to restore that accountability by dusting off the "public interest, convenience and necessity" clause in the Telecommunications Act to measure over-the-air, satellite and cable-TV service.

JANET HILL KEEFER is an associate professor of journalism and former dean at the Drake University School of Journalism and Mass Communication.

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